IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 16557 of 2007(U)

PETITIONERS:

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1. SINU CLETUS, S/O.CLETUS, "CEEJASS",
   T.C.NO.XXX/272, KALLUMMOODU, ANAYARA P.O.
   THIRUVANANTHAPURAM.

2. SMT.SIMI JOSEPH M, W/O.ANOOP
   MADATHIPARAMBIL HOUSE, HOUSE NO.XI/37,
   NAYARAMBALAM P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENTS:

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1. THE KERALA PUBLIC SERVICE COMMISSION,
   REPRESENTED BY ITS SECRETARY, PATTOM,
   THIRUVANANTHAPURAM.

2. THE SECRETARY,
   KERALA PUBLIC SERVICE COMMISSION,
   THIRUVANANTHAPURAM.

3. THE CHIEF ENGINEER (PWD ADMINISTRATION)
   THIRUVANANTHAPURAM - 695 033.

4. THE CHIEF ENGINEER
   (IRRIGATION ADMINISTRATION),
   THIRUVANANTHAPURAM - 695 033.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

W.P (C) No. 16557 of 2007

Dated this the 13th day of July, 2007

J U D G M E N T

The petitioners are candidates included in Ext.P1 list published by the P.S.C. for appointment to the post of Assistant Engineer (Civil) in the Public Works Department/Irrigation Department. The list was published on 9.5.2006. They are included as Rank Nos. 7 & 8 in the supplementary list of L.C. They submit that there were six Latin Catholic candidates in the main list. They were all advised and persons upto Rank No.6 in the supplementary list of L.C were also advised. Now as evident from Ext.P2 certain turns which are earmarked for LC candidates are going to be diverted to the ST and in their absence to SC candidates. Feeling aggrieved by the same, this writ petition is filed. According to them if the LC candidates have benefited by being advised in ST turns, the compensation can only be to ST candidates. Therefore, the diversion of vacancies for SC is unjustified, it is submitted.

2. The PSC has filed a counter affidavit and the above contention has been answered by it in the following manner.

"A total number of 288 candidates were advised to PWD/ Irrigation Department as on 12/02/2007. Details of advice made upto 12.02.2007 are as follows:

Number of candidates advised	Date of advice
231	05/08/2006
16	03/10/2006
21	07/11/2006
20	12/02/2007

At the time of finalisation of the ranked list 85 NCA compensation turns were pending to be satisfied. Among these 9 turns were to be compensated by LC to ST for the extra benefit derived by Latin Catholic due to the Non availability of ST candidates in the previous ranked lists. Only one ST candidate was included in the ranked list brought into force on 09/05/2006 and he was advised against an 'Ezhava' turn satisfying the NCA compensation due to the ST from Ezhava. As there was no ST candidate remaining in the ranked list, turns pending to be compensated to ST by LC were not satisfied and Latin Catholic candidates were advised against their turns as per the then existing rules and candidates upto and including Rank No.6 in the supplementary list - LC were advised while advising candidates against the 288 reported vacancies. The regular rotation started from MR XVII 80 M and ended at MR XX 23 OC.

The details of Latin Catholic candidates advised are as follows:

1. NJD compensation to MR XVI 22 LC Rank No.57 (Mary Smitha Theophylus)
2. MR XVII 94 L.C. Rank No.58 (Rex Felix)
3. XVIII 8 LC Rank No.77 (Sinoj Joy.P)
4. ” 22 LC Rank No.98 (Rahul Lesliv)
5. ” 68 LC Rank No.101 (Phenix.S.S)
6. ” 94 LC Rank No.177 (Saritha John Bose)
7. XIX 8 LC Rank No.1 S/L (Jude Joseph C.D)
8. ” 22 LC Rank NO.2 (Faby Louis)
9. ” 68 LC Rank No.3 (Anil Kumar.S)
10. ” 94 LC Rank No.4 (Sindhia.R)

11. NJD compensation to MR Rank No.5 (Divya.C.J) XIV 68 LC
12. MR XXB LC Rank No.6 (Sooraj John.T)

Later 33 more vacancies were reported (22 fresh +4 NJD - PWD; 2 NJD +5 fresh - Irrigation). While working out the rotation for the above vacancies, Circular No.9/07 dated 27.3.2007 came into force existence based on the revised rules of reservation. All rotations approved after 26/02/2007 has to be prepared in accordance with the above circular. As per the above circular, NCA compensation turns are taken to be satisfied irrespective of the fact, whether that community is available in the ranked list or not and if one community is not available in the ranked list, notification is to be issued for that community. As the LC community derived 9 extra benefit turns from ST community due to the non availability of ST candidates in the previous ranked list, 9 turns of LC in the present rotation are to be compensated to ST and in the absence of ST, the Scheduled Caste candidates as per Circular No.9/07. Regarding the contention of the petitioner in advising SC candidates against ST turns it is submitted that even if SC candidates are not advised against ST turns, such turns cannot be made use to advise LC candidates and they are to be notified for ST community as per the revised rules on reservation."

3. In answer to the above statement of the PSC, the Learned Senior Counsel appearing for the petitioners submitted that the newly introduced rule and the Circular issued based on it cannot be used for advice from the existing list which was notified before the enforcement of the said circular.

4. It is true that the amendment to the Rule come into force after the list was published. I think the new Rules which say that if candidates are not available from a particular community, the candidates from other communities cannot be advised will be applicable while making advices to various turns after the said rule came into force. In other words, the new Rules will apply to advice of candidates from the existing lists. Contentions to the contrary are untenable. If the interpretation of the learned Senior counsel for the petitioner is accepted, the said Rule will apply only to advices and appointments from the list published after the introduction of the new rule. I think the said contention cannot be accepted. In view of the Rule and the Circular issued, the latter will govern further advices and appointments notwithstanding the date of publication of the rank list.

5. In view of the above position, the diversion of LC vacancies to SC candidates is in accordance with the Rules, now in force. Therefore, the challenge against Ext.P2 is repelled and the writ petition is dismissed.

(K.BALAKRISHNAN NAIR, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007